

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID STEBBINS,

Plaintiff,

v.

MICROSOFT, INC.,

Defendant.

No. C11-1362 JCC

DECLARATION OF JOHN A.
GOLDMARK IN SUPPORT OF
MICROSOFT'S OPPOSITION TO
PLAINTIFF'S MOTIONS FOR
SANCTIONS, MOTION FOR
JUDGMENT ON THE PLEADINGS,
AND MOTION FOR DEFAULT

Noted for Consideration:
November 18 & November 25, 2011

John A. Goldmark declares as follows:

1. I am an associate in the law firm of Davis Wright Tremaine LLP and counsel of record in this action for defendant Microsoft Corporation. I make this Declaration on my own personal knowledge.

2. I attach as **Exhibit A** a true and correct copy of the Microsoft Xbox LIVE Terms of Use, updated July 2011, available at <http://www.xbox.com/en-US/Legal/livetou>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of November, 2011.

/s/ John A. Goldmark

John A. Goldmark

GOLDMARK DECLARATION ISO OPP'N TO MOTIONS FOR
SANCTIONS, JUDGMENT ON THE PLEADINGS, & DEFAULT
(C11-1362 JCC) — 1

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CERTIFICATE OF SERVICE

I certify that on November 11, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to *Pro Se* Plaintiff David Stebbins at this e-mail address: stebbinsd@yahoo.com.

DATED November 11, 2011.

Davis Wright Tremaine LLP
Attorneys for Microsoft Corporation

By s/ John A. Goldmark
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EXHIBIT A



Free. **XBOX LIVE**
My Account | Join Now | Sign In



Xbox 360 + Kinect

Xbox LIVE

Social

Games

Video

Music

Support



Xbox LIVE Terms of Use

Updated: July 2011

Effective September 2011

Thank you for choosing Microsoft!

Please read this contract carefully. This contract governs your use of Xbox LIVE. Games for Windows Live, Zune, and Windows Phone Marketplace services or software that display or link to this contract, including services or software that allow you to stream, download, view or use certain digital content, such as music, video, games, mobile applications and other content that Microsoft makes available from time to time (the "Service"). The Service may be accessed from the Xbox 360 console, a personal computer, Windows Phone 7.x mobile phone, portable media player, other devices authorized by Microsoft (each an "Authorized Device"), or the World Wide Web. Microsoft may update this contract by posting new terms and conditions. If you do not agree to the changes, you must stop using the Service. Your continued use of the Service is your acceptance of the changed contract. If you use or receive software from us as part of the Service, its use is governed by one of two sets of license terms: If you're presented with a license for the software, the terms of that license apply; if no license is presented to you, the terms of this contract apply. You can view the most current version of this contract by clicking the "Terms of Use" link at the bottom of the web page. Your use of certain parts of the Service may be subject to additional guidelines, posted notices or codes of conduct. These are incorporated by reference into this contract.

Please note we do not provide warranties for the Service. This contract also limits our liability. These terms are in sections 15 and 16. We ask that you read them carefully.

1. What the Contract Covers.

This is a contract between you and the Microsoft company listed in Section 19 ("Microsoft," "we," "us," or "our") for use of the Service. Sections 1-5 and 8-20 apply across the Service. Sections 6 and 7 only apply if the Service involves payments to or from Microsoft. Sections 21-23 only apply if you use the Services identified in those sections. Some of these Services may not be fully available in your country or region or on your device.

By creating an account or otherwise accepting this contract, you represent that you are at least 18 years old or have reached the age of "majority" where you live. Your parent or legal guardian must set up an account on your behalf and accept this contract if you are under 18 or have not reached the age of "majority". You can use your Windows Live ID to register for the Service. A Windows Live ID will be automatically created for you if you do not have one. However, an automatically created Windows Live ID will only function with the Service. If you wish to use it for other Microsoft services, you must also agree to the applicable terms of use or terms of service for a general-purpose Windows Live ID.

2. Additional Terms.

Certain games, content offerings, features, services or events (for example, sweepstakes and tournaments) that are available via the Service ("Third-Party Features") may contain additional terms, codes of conduct, or guidelines that govern your use of those Third-Party Features (collectively "Additional Terms"). Any dealings between you and such a third party are solely between you and the third party. Except as otherwise provided herein, the Additional Terms govern your use of the Third-Party Features. We do not endorse and are not responsible or liable for any aspect of any such dealings. Moreover, the Additional Terms do not apply to the Service or to your legal relationship

Related Links

[Xbox.com Terms of Use](#)

[Code of Conduct](#)

with Microsoft. The terms in this contract limiting our liability also apply to your use of Third-Party Features to the extent that such terms are not covered in the Additional Terms. Nothing in any Additional Terms increases our liability or changes your relationship with us. Certain Third-Party Features may not be available for use by people under a certain age. Please review the privacy controls provided by Third-Party Features and be aware that those controls affect how you share your personal information when using that Third-Party Feature.

3. Using the Service.

You must comply with this contract, all applicable laws, and the Microsoft Anti-spam Policy (<http://go.microsoft.com/fwlink/?LinkId=117951>) when using the Service. You must also obey any policies, codes of conduct and notices we provide, including the Code of Conduct (<http://www.xbox.com/legal/codeofconduct> and its successors) ("Code of Conduct"). You agree that the Service is only for your personal use, and you will not use the Service, any content available on the Service, or your account, for any commercial purpose. You may be unable to use the Service outside the country associated with your account ("Territory").

You must not use the Service to harm others or the Service. For example, you must not:

- use the Service to harm, threaten, or harass another person, organization, or Microsoft;
- damage, disable, overburden, or impair the Service (or any network or Authorized Device connected to the Service);
- resell or redistribute any part of the Service or access to the Service;
- use or attempt to use any unauthorized means to modify, reroute, or gain access to the Service;
- use any automated process or service (such as a bot, a spider, periodic caching of information stored by Microsoft, or metasearching) to access or use the Service, or to copy or scrape data from the Service;
- obtain (or try to obtain) any data from the Service or related hardware, except the data that we intend to make available to you; or
- use the Service or related hardware to design, develop, or update unauthorized software.

4. Your Service Account, Associated Accounts and Accounts from Third Parties.

Except as provided in this Section, only you may use your Service account. You must keep your accounts and passwords confidential and not authorize any third party to access or use the Service on your behalf unless we provide an approved mechanism for that. You must contact Customer Support immediately if you suspect misuse of your accounts or any security breach in the Service. For some parts of the Service, you may be able to set up additional accounts that are dependent on your account ("associated accounts"). You are responsible for all activity that takes place with your Service account and any associated accounts. We may limit who may use your Service account or any associated accounts or the number of devices from which you may access the Service.

If you allow or enable a minor to use your Service account or an associated account, then:

- You represent that you are the parent or legal guardian of such minor;
- You acknowledge that some features of the Service, and some content available through the Service, may contain or expose users to material that is unsuitable for minors. You agree to supervise usage by minors whom you permit or enable to use the Service. The Service is not intended for use by children under 13 without adult supervision;
- You acknowledge that we offer "Parental Controls" to help you restrict purchases and limit access to material that may be unsuitable for minors. For example, we offer "Family Settings" on the Xbox 360 console and on the Service. You may view or revise your Parental Controls by logging into your account on <http://www.xbox.com>. Additional information about Parental Controls is available at <http://www.xbox.com/support>; and
- You are responsible for any material that a user of your Service account accesses or is denied access to (including as a result of your use or non-use of Parental Controls). You acknowledge that use of Parental Controls is not a substitute for your personal supervision of minors that use your Service account.

If you use an associated account, you acknowledge that the holder of the Service account has full control over your associated account. This control includes the right to: (i) end the Service; (ii) close or alter your associated account at any time; (iii) access and modify Parental Controls for your associated account; and (iv) receive notices from us. In some cases, this control also includes the control of purchasing options from your associated account and the ability to request and receive

device and Service usage information related to your associated account. We collect profile, usage and activity data related to your associated account and deliver it to the Service account holder. If you are an associated account user, this contract applies to your use of the Service, except for the following Sections: 4 (excluding this paragraph); 6 (If You Pay Microsoft); and Section 18.6 (Notices to Parties).

5. Internet Access May Be Required.

To access the Service by means of a cellular data connection on a portable device (such as a Windows Phone), you will need a data access plan from your wireless carrier. In order to access the Service via WiFi or Internet connection, you will need a compatible device, software, browser and Internet access. You may incur charges related to Internet access and data transfer for such uses. Microsoft may change the requirements for accessing the Service from time to time and you are responsible for adhering to the requirements. If you do not agree with the changes, you must cancel and stop using the Service.

6. Payment.

6.1 Charges

If there is a charge associated with a Service, you agree to pay that charge. Prices for the Service exclude all applicable taxes and currency exchange settlements, unless stated otherwise. You may still incur charges incidental to using the Service even if the service itself is free. For example, charges for Internet access, text messaging, or other data transmission. You are solely responsible for the payment of such taxes or other charges related to your use of the Service.

6.2. Your Billing Account

You must provide a payment method at the time you sign up for a Service. You can access and modify your billing account information (including changing your payment method) on the Billing and Account Management website (<https://billing.microsoft.com>). You agree to keep your billing account information current at all times. We may cancel your Service if we do not receive payment from you. Changes made to your billing account will not affect charges we submit to your billing account before we reasonably could act on your request.

6.3. Billing

By providing Microsoft with a payment method, you: (i) represent that you are authorized to use the payment method that you provided; (ii) authorize Microsoft to charge you for the Service using your payment method; and (iii) authorize Microsoft to charge you for any paid feature of the Service that you choose to sign up for or use while this contract is in force. We may bill you: (a) in advance; (b) at the time of purchase; (c) shortly after purchase; or (d) on a recurring basis for subscription Services. We may charge you up to the amount you've approved. We will notify you in advance of any prices changes for recurring subscription Services. We may bill you for more than one of your prior billing periods at the same time.

6.4 Automatic Renewal.

We may automatically renew your Service (provided that automatic renewals are allowed in your country) at the then current price for the Service. We will inform you by email prior to the renewal and remind you that your designated payment method will be billed. We will also provide you with instructions on how to cancel the Service. You must cancel the Service (see Section 6.10 below) prior to the renewal date to avoid being billed for the renewal.

6.5. Online statement and errors

We will provide you with an online billing statement on the Billing and Account Management website (<https://billing.microsoft.com>), where you can view and print your statement. If we make an error on your bill, you must tell us within 120 days after the error first appears on your bill. We will then promptly investigate the charge. Subject to applicable laws, if you do not tell us within that time, you release us from all liability and claims of loss resulting from the error and we will not be required to fix the error or provide a refund. If we identify a billing error, we will either fix that error within 60

days or notify you that the correction will take longer.

6.6. Cooling off period

We may begin to provide the Service immediately when you request a Service from us. There is no cancellation or "cooling off" period, except if required by law. You may cancel the Service as provided in Section 6.10.

6.7. Trial period offers

If you are participating in any trial period offer, you must cancel the Service by the end of the trial period to avoid incurring new charges unless we notify you otherwise. If you do not cancel your Service and we have told you the service will convert to a paid subscription at the end of the trial period, you authorize us to charge you for the Service.

6.8. Price Changes

We reserve the right to change our prices at any time. We will notify you at least 30 days in advance if we change the price of the Service. Any price change will be effective at the next renewal or billing period for your Service. If you do not agree to the price change, you must cancel and stop using the Service before the price change takes effect. If you cancel, your Service ends at the end of your current service period or, if we bill your account on a periodic basis, at the end of the period in which you canceled.

6.9. Refund policies

All sales are final and nonrefundable unless otherwise provided by law or by a particular Service offer.

6.10. Canceling the Service

You may cancel the Service at any time, with or without cause. Go to the Billing and Account Management website (<https://billing.microsoft.com>) for information and direction on how to cancel your Service. You should also review the offer describing the Service as: (i) you may not receive a refund at the time of cancellation; (ii) you may be required to pay cancellation fees; and (iii) you may be required to pay all charges made to your account for the Service prior to the date of cancellation.

6.11. Late payments

To the extent permitted by law, you must pay for all reasonable costs we incur to collect any past due amounts, including reasonable attorneys' fees and other legal fees and costs. **We reserve the right to suspend or cancel the Service if we do not receive an on time, full payment from you.**

6.12. Internet access service

If the Service doesn't include Internet access, you're responsible for paying the fees charged by your Internet access provider. Those fees are in addition to the fees you pay us for the Service.

The rest of this section applies only if your Service includes Internet access. This Service may not be available in your country or region. If you use a dial-up modem, you may incur toll, roaming, or other access charges, depending on the number you are calling and from where you are calling. You should check with your local telephone company first to determine if the number you plan to use will incur such charges. You may still incur charges, depending on your local provider, calling location, and phone plan even if we suggest a phone number for you to call. We will not reimburse you for such charges.

7. Payments to You.

Your right to any payment due under a Service depends on your promptly providing us with all information we require to properly make the payment. Subject to applicable laws, you must provide us with the information we request before your right to receive the payment accrues. You are

responsible for the accuracy of the information you provide and for any taxes and charges you may incur. You must also comply with any other conditions we place on your right to any payment. If you receive a payment in error, we may reverse or seek return of the payment. You will cooperate with us in our efforts to do this. We may also reduce your account balance without notice to adjust for the previous overpayment.

8. Available Content.

The Service may consist of specific content, features and functions that vary depending on your Territory and the type of device from which you access the Service. For example, the Service may include access to music, video, games, or mobile applications that are available in certain countries or for certain devices only.

Some content available in the Service may be unavailable from time to time or may only be offered for a limited time due to contractual or other limitations. As such, you may not be able to re-download or re-stream certain content that you have purchased. We have no obligation to provide a re-download or replacement of any content previously purchased. To the extent we receive information from the content owners indicating the date their content will be unavailable, we will endeavor to share this information with you.

Your ability to access the Service and obtain certain content is restricted to your Territory. If you change your account to a different Territory, you may not be able to re-download or re-stream content that was available to you in your previous Territory. You may be required to purchase and pay for content in your new Territory even though you have already paid for that content in the previous Territory.

9. Your Content.

We do not claim ownership of the content you provide on the Service. Your content remains your content. We do not control, verify, or endorse the content that you and others make available on the Service.

You control who may access your content. If you share content in public areas of the Service or in shared areas available to others you have chosen, then anyone you have shared content with may use that content. When you give others access to your content on the Service, you grant them free, nonexclusive permission to use, reproduce, distribute, display, transmit, and communicate to the public the content solely in connection with the Service and other products and services made available by Microsoft. If the submission is a photograph or other digital image, you also expressly waive any and all rights of privacy and publicity with respect to the image. If you do not want others to have those rights, do not use the Service to share your content.

You understand that Microsoft may need, and you hereby grant to Microsoft and its affiliates, resellers, distributors, service providers, partners, and/or suppliers the right, to use, modify, adapt, reproduce, distribute, publish and display content posted on the Service. These include your name, Gamertag, motto, avatar, or other information you supply in connection with the content. These rights apply solely to the extent necessary to provide the Service.

You must respect the rights of artists, authors, inventors and creators. Content may be protected by copyright. People appearing in content may have a right to control the use of their image. If you share content on the Service in a way that infringes others' copyrights, other intellectual property or proprietary rights, or publicity or privacy rights, you are breaching this contract (and violating other rights and possibly the law). You represent and warrant that you have all the rights necessary for you to grant the rights in this section and that the use of the content does not violate any law. We will not pay you for your content. We may refuse to publish your content for any or no reason. We may remove your content from the Service at any time and for any reason, including if: (i) you breach this contract; (ii) the content exceeds limits on storage or file size; or (iii) we cancel or suspend the Service.

You are responsible for backing up the data and content that you store on the Service. We may permanently delete your data from our servers if the Service is suspended or canceled. We do not have any obligation to return data to you after the Service is suspended or canceled. If data is stored with an expiration date, we may also delete the data as of that

date. Data that is deleted may be irretrievable.

10. Online Forums.

The Xbox LIVE Forums, Games for Windows Live Forums, and the Zune Forums (each an "Online Forum" and collectively the "Online Forums") are sites available at: <http://forums.xbox.com>, <http://forums.xbox.com/gfw/default.aspx> and <http://answers.microsoft.com/zune>, respectively. The Online Forums are where users can get help and support with certain Authorized Devices and related software and services. You can browse the Online Forums without signing in. But you must sign into your Service account to post a message or reply to one. Anything that you post to the Online Forums is public. All posts you make to the Online Forums must comply with the Code of Conduct and the other terms of this contract. Any post that does not comply may be removed by Microsoft and result in, among other things, termination or suspension of your rights to use the Service. Although we have no obligation to screen, edit, monitor or remove any of the content posted by users in the Online Forums or elsewhere on or through the Service, we reserve the right to do so without notice in our sole discretion. You can report abuse or violations of the Code of Conduct in an Online Forum by clicking on the "report" button and completing the web form. We are not responsible or liable for any statements, representations or content provided by users in the Online Forums or elsewhere in connection with the Service. Your use of Online Forums and the Service is at your own risk.

11. Privacy.

We collect certain information about you to operate and provide the Service. We may also automatically upload information about your computer, your use of the Service, and Service performance as part of the Service. We use and protect that information as described in the Microsoft Online Privacy Statement (<http://go.microsoft.com/fwlink/?LinkId=81184>), the Windows Phone 7 Privacy Statement (<http://go.microsoft.com/fwlink/?LinkId=187032>), and their successors. In particular, we may access or disclose information about you, including the content of your communications, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Microsoft or our customers, including the enforcement of our agreements or policies governing your use of the Service; and (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Microsoft employees, customers, or the public.

We may use technology or other means to protect the Service, protect our customers, or stop you from breaching this contract. These means may include, for example, filtering to stop spam or increase security. These means may interfere with your use of the Service and hinder or interrupt your use of the Service. We reserve the right to enforce and verify compliance with any part of this contract. This includes Microsoft's right to cooperate with any legal process relating to your use of the Service, and a third party claim that your use of the Service is unlawful or infringes such third party's rights.

Personal information collected by Microsoft may be stored and processed in the United States or any other country or region in which Microsoft or its affiliates, subsidiaries, or service providers maintain facilities. You consent to any such transfer of information outside of your country or region. Microsoft abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, European Economic Area and Switzerland.

We may collect certain information about Service performance, your Authorized Device, and your use of the Service and Authorized Device to provide you the Service and improve the Service and Authorized Devices. We may automatically upload this information from your Authorized Device. Such data may include Xbox console hardware and operating performance data, unique identifiers on game discs, network performance data, and Service quality data. If you use the Xbox console with Kinect, we may also collect data about the way in which you interact with the console and the Service to improve Microsoft products and services. Any software or hardware errors which occur while you are connected to the Service or are offline may be uploaded and reported. All such data may be stored with the Xbox console's unique identifier, and may be associated with other personally identifiable information. You may read about this data collection in more detail in the Microsoft Online Privacy Statement at <http://go.microsoft.com/fwlink/?LinkId=81184>.

12. Intellectual Property.

We may automatically check your version of the software. We may also automatically download upgrades to the software to your Authorized Device to update, enhance, and further develop the Service.

Any software or content (e.g., text, images, video, graphics, music, sound, or games) (for purposes of this Section 12, we refer to all of these, as applicable, as "Software") we provide as part of the Service is licensed and not sold. We reserve all other rights not expressly granted in this contract. The Software license ends when your Service ends unless we notify you otherwise. You must then uninstall the Software, or we may disable it. You must not work around any technical limitations in the Software.

Microsoft Products and Services are subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the products and services. These laws include restrictions on destinations, end users and end use. For additional information, see <http://www.microsoft.com/exporting>. If you use the Software to access content that has been protected with Microsoft Digital Rights Management (DRM), the Software may automatically request media usage rights from an online rights server and download and install DRM updates in order to let you play the content. See the DRM information in the [Microsoft Silverlight Privacy Statement \(http://go.microsoft.com/fwlink/?LinkId=178857\)](http://go.microsoft.com/fwlink/?LinkId=178857) for more information.

13. Microsoft Points.

Microsoft Points is a Service under which you can acquire Points and redeem those Points for certain online services and digital products. You can see how many Points you have by checking your Points balance at <https://billing.microsoft.com>. You can obtain selected Services or digital products that we offer in exchange for Points. You can do this by redeeming your Points as described in the messaging for those offers.

You can acquire Points in a variety of ways. For example, you can purchase Points, or certain Services may give you Points for using the Service or specific features of the Service (also known as "Promotion Points"). You can earn Promotion Points only for actions you actually complete. You are responsible for any taxes that may result from your participation in the Points Service.

When you obtain Points, you have obtained a limited license to a digital product. Points have no monetary value. You may not exchange Points for cash or money, regardless of how you acquired those Points. Points are not your personal property. Your only recourse for using Points is to obtain the specific online Services or digital products that we offer for Points redemption. We may further restrict our Points redemption offers based on your country of residence. We encourage you to redeem your Points. Points redemption offers may be limited in time and scope. The scope, variety, and type of online Services and digital products offered can change at any time. We have no obligation to continue making offers available for Points redemption.

Promotion Points may expire at any time, as set forth in the messages related to that promotion. We may cancel, suspend, or otherwise limit your access to your Points if we suspect fraudulent, abusive, or unlawful activity. Once we delete Points from a balance, we will not reinstate them, except at our discretion. When we cancel, suspend, or otherwise limit access to your Points, your right to use your Points immediately ceases. We will use reasonable efforts to investigate Points that are subject to access limitations and to reach a final decision on the limitations promptly. In addition, we may limit your use of the Points service. This includes applying limits to: (i) the number of Points you may have credited to your Points balance at one time; (ii) the number of Points you may redeem within a given time period (for example, one day); and (iii) the number of Promotion Points you may obtain in a single event.

If we post Points to your balance for activity that is subsequently voided, canceled or that involves a returned item, we will remove those Points from your balance. You must ensure that we properly post your Points to your Points balance. If you believe that you have validly acquired Points that we have not posted to your Points balance, subject to applicable laws, we will not post these Points unless you contact us within 12 months after the date you claim to have acquired those Points. We may require reasonable documentation to support your claim.

14. Service Operation and Equipment.

You may only access the Service with an Authorized Device or by logging into your account via the World Wide Web. You agree that: (i) you are using only authorized software and hardware to access the Service; (ii) your software and hardware have not been modified in any unauthorized way (e.g., through unauthorized repairs, unauthorized upgrades, or unauthorized downloads); and (iii) we have the right to send data, applications or other content to any software or hardware that you are using to access the Service for the express purpose of detecting an unauthorized modification. You must not attempt to disassemble, decompile, create derivative works of, reverse engineer, modify, further sublicense, distribute, or use for other purposes the Service, any game, application, or other content available or accessible through the Service, or any hardware associated with the Service or with an Authorized Device. If you do so, we may cancel your account and your ability to access the Service, and pursue other legal remedies. We may take any legal action we deems appropriate against users who violate our systems or network security, this contract or any additional terms incorporated or referenced in this contract. Such users may also incur criminal or civil liability.

We reserve complete and sole discretion with respect to the operation of the Service. We may, among other things: (i) restrict or limit access to the Service; (ii) retrieve information from the Authorized Device and any connected peripheral device used to log onto the Service as necessary to operate and protect the security of the Service, and to enforce this contract; and (iii) upgrade, modify, withdraw, suspend, or discontinue any functionality or feature of the Service, any game or other content available or accessible through the Service, or any hardware or software associated with the Service or with an Authorized Device, from time to time without notice. We may do so by the automatic download of related software directly to your Authorized Device, including software that prevents you from accessing the Service, playing pirated games, or using unauthorized hardware peripheral devices.

15. WE MAKE NO WARRANTY.

We provide the Service "as-is," "with all faults," and "as available." We do not guarantee the suitability, reliability, availability, accuracy or timeliness of information available from the Service, or that the Service will be uninterrupted, secure, error-free or that data loss will not occur. You acknowledge that computer and telecommunications systems are not fault-free and occasional periods of downtime will occur. We give no express warranties, guarantees, or conditions. We disclaim all warranties with regard to the Service, including any implied warranties (e.g., those of merchantability, fitness for a particular purpose, workmanlike effort, title and non-infringement). You may have additional consumer rights under your local laws that this contract cannot change.

15A. Australian Consumer Guarantees

If you live in Australia, there are consumer guarantees which are implied under the Australian Consumer Law which will apply to the goods and services supplied to you as part of the Services. Clause 15 above is modified by the inclusion of those guarantees.

For such of the Service that comprises services (rather than goods) should we breach any of these consumer guarantees your remedy is limited to receiving the supply of the service again, or the payment of the cost of having the services supplied again.

For such of the Service that comprises goods (which includes computer software) the following applies:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

In the case of software, the repair of goods may not be practicable, and a replacement will be provided if this is the case. For any warranty or consumer guarantee issue, please contact the Xbox Call Centre at (02) 8031-8186 (if you are in Sydney) or 1800 555 741.

16. LIABILITY LIMITATION.

You can recover from us for all successful claims only direct damages up to a total amount equal to your Service fee for one month. You cannot recover any other damages, including consequential, special, indirect, incidental, or punitive damages and lost profits.

This limitation applies to anything related to this contract, for example:

- the Service;
- loss of data;
- your content, third party content (including code), third party programs, or third party conduct;
- viruses or other disabling features that affect your access to or use of the Service;
- incompatibility between the Service and other services, software, or hardware;
- delays or failures you may have in initiating, conducting, or completing any transmissions or transactions in connection with the Service in an accurate or timely manner; and
- claims for breach of contract; breach of warranty, guarantee, or condition; misrepresentation; strict liability; negligence; or other tort.

It also applies even if this remedy does not fully compensate you for any losses, fails of its essential purpose or we knew or should have known about the possibility of the damages.

Nothing in these terms shall affect the statutory rights of any consumer or exclude or restrict liability for death or personal injury arising from our negligence, fraud, or our gross negligence or willful intent. Some or all of these limitations or exclusions may not apply to you if your state, province, or country does not allow the exclusion or limitation of incidental, consequential or other damages.

17. Changes to the Service; If We Cancel the Service.

We may change the Service or delete features of the Service at any time for any reason. If you do not agree to these changes, then you must cancel and stop using the Service.

A particular feature may be a pre-release version – a beta, for example – and may not work correctly or in the way a final version might work. We may significantly change the final version or decide not to release a final version.

We may cancel or suspend your use of the Service at any time without notice and for any reason. Upon Service cancellation, your right to use the Service stops right away. Your ability to access and use Third-Party Features also stops right away. Our cancellation of the Service will not change your obligation to pay all charges made to your billing account. If we cancel the Service in its entirety without cause, then we will refund to you on a pro-rata basis the amount of your payment for the portion of your Service remaining at the time of cancellation. Sections 6 (for amounts incurred before termination), Section 11, Sections 15-18 and those sections of this contract that by their terms apply after termination of this contract will survive any termination of this contract. If you have confidentiality obligations related to the Service, those obligations remain in force (for example, you may have been a beta tester).

18. General Legal Terms.

18.1. Interpreting the Contract. All parts of this contract apply to the maximum extent permitted by law. A court may hold that we cannot enforce a part of this contract as written. If this happens, we will replace that part with terms that most closely match the intent of the part that we cannot enforce. The rest of this contract won't change. This is the entire contract between you and us regarding your use of the Service. It supersedes any prior contract or oral or written statements regarding your use of the Service. The section titles in this contract do not limit the other terms of this contract. If you are accessing the Service within Germany, the agreement located at <http://www.xbox.com/de-DE/Legal/LiveTOU> applies instead of this contract.

18.2. Assignment and Transfer. Microsoft may assign, transfer, sell, rent or lend or otherwise dispose our rights and obligations under this contract, in whole or part, at any time without notice to you. You may not assign this contract or any part of it, or any rights to use the Service or any part of the Service, either temporarily or permanently, to any other party. Any attempt to do so is void.

18.3. No Third Party Beneficiaries; Microsoft Affiliates. This contract is solely for your and our benefit, except for certain sections of this contract which are for the benefit of Microsoft's affiliates and owners of content available through the Service. As a result, Microsoft's affiliates and owners of content available through the Service are entitled to enforce this contract. Except as stated above, this contract does not create any enforceable rights by anyone other than you and Microsoft and permitted successors.

18.4.No Waiver. We enforce this contract, the Code of Conduct and other user content and conduct rules set forth in this contract, and exercise our rights and remedies at our sole discretion. If we fail to enforce such rules, rights, or remedies in some instances it is not a waiver of our right to do so in other instances. These rules do not create any private right of action for you or any third party or any reasonable expectation that the Service will not contain any content that is prohibited by such rules.

18.5.Claims Must Be Filed Within One Year. To the extent permitted by law, any claim related to this contract or the Service must be brought within one year. The one-year period begins on the date when the claim first could be filed. Any claim that is not filed within that time is permanently barred. This section applies to you and your successors. It also applies to us and our successors and assigns.

18.6.Notices to Parties. You may notify us as stated in customer support for the Service. We do not accept email notices. This contract is in electronic form. We may send you information about the Service, additional information, and information the law requires us to provide in electronic form. We may provide required information to you: (i) by e-mail at the address you specified when you signed up for the Service; (ii) by access to a Microsoft web site we identify; or (iii) by access to a pre-designated Microsoft web site. Notices e-mailed to you will be deemed given and received when the e-mail is sent. As long as you can access and use the Service, you will be able to receive such notices. If you do not consent to receive any notices electronically, you must stop using the Service.

18.7.Other Notices.

Copyright and Trademark Notices. All contents of the Service except user-generated content are Copyright © 2011 Microsoft and/or its suppliers, One Microsoft Way, Redmond, Washington 98052-6399 U.S.A. All rights reserved. We or our suppliers own the title, copyright and other intellectual property rights in the Service, software, and content. Microsoft, Windows, Windows Live, Windows logo, MSN, MSN logo (butterfly), Bing, Xbox, Xbox 360, Xbox LIVE, Kinect, the Xbox logos and other Microsoft products and services may also be either trademarks or registered trademarks of Microsoft in the United States and other countries. The names of actual companies and products mentioned in this contract may be the trademarks of their respective owners. Any rights not expressly granted in this contract are reserved. Certain software used in certain Microsoft web site servers is based in part on the work of the Independent JPEG Group. Copyright © 1991-1996 Thomas G. Lane. All rights reserved. "gnuplot" software which may be used in certain Microsoft web site servers is copyright © 1986-1993 Thomas Williams, Colin Kelley. All rights reserved.

Notices and Procedure for Making Claims of Copyright Infringement. Notifications of claimed copyright infringement should be sent to Microsoft's Designated Agent pursuant to Title 17, United States Code, Section 512(c)(2). **WE WILL NOT RESPOND TO INQUIRIES THAT ARE NOT RELEVANT TO THE FOLLOWING PROCEDURE. For details and contact information see Notice and Procedure for Making Claims of Copyright Infringement at** <http://www.microsoft.com/info/cpyrtInfrg.htm>.

Financial Notice. Microsoft is not a broker/dealer or registered investment advisor under U.S. federal securities law or securities laws of other jurisdictions. Microsoft does not advise individuals as to the advisability of investing in, purchasing, or selling securities or other financial products or services. Nothing contained in the Service constitutes an offer or solicitation to buy or sell any security. Neither Microsoft nor its licensors of stock quotes or index data endorse or recommend any particular financial products or services. Nothing contained in the Service is intended to constitute professional advice, including but not limited to, investment or tax advice.

Notice about the H.264/AVC Visual Standard and the VC-1 Video Standard. Software provided with the Service may include H.264/MPEG-4 AVC and/or VC-1 decoding technology. MPEG LA, L.L.C. requires this notice:

THIS PRODUCT IS LICENSED UNDER THE AVC AND THE VC-1 PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (A) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE STANDARDS ("VIDEO STANDARDS") AND/OR (B) DECODE AVC AND VC-1 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NONE OF THE LICENSES EXTEND TO ANY OTHER PRODUCT REGARDLESS OF WHETHER SUCH PRODUCT IS INCLUDED WITH THIS SOFTWARE IN A SINGLE ARTICLE. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE <http://www.mpegla.com>

For clarification purposes only, this notice does not limit or inhibit the use of the software provided under this contract for normal business uses that are personal to that business which do not include: (i) redistribution of the software to third parties; or (ii) creation of content with the VIDEO STANDARDS compliant technologies for distribution to third parties.

19. Choice of Law and Location for Resolving Disputes.

If you live in **North or South America**, you are contracting with Microsoft Corp., One Microsoft Way, Redmond, WA 98052, USA. Washington State law governs the interpretation of this contract and applies to claims for breach of it, regardless of conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence in the United States, or the laws of the country to which we direct your Service if you live outside the United States. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in King County, Washington, USA, for all disputes arising out of or relating to this contract.

If you live in **Europe**, you are contracting with Microsoft Luxembourg S.à.r.l., 20 Rue Eugene Ruppert, Immeuble Laccolith, 1st Floor, L-2543 Luxembourg. All claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of Luxembourg or of the country in which you reside. With respect to jurisdiction, you may choose the responsible court in Luxembourg or in the country in which you reside for all disputes arising out of or relating to this contract.

If you live in the **Middle East or Africa**, you are contracting with Microsoft Luxembourg S.à.r.l., 20 Rue Eugene Ruppert, Immeuble Laccolith, 1st Floor, L-2543 Luxembourg. The laws of Luxembourg govern the interpretation of this contract and apply to claims for breach of it, regardless of conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of the country to which we direct your Service. You and we irrevocably agree to the exclusive jurisdiction and venue of the Luxembourg courts for all disputes arising out of or relating to this contract.

If you live in **Asia** or the **South Pacific (other than the countries called out below)**, you are contracting with Microsoft Regional Sales Corp. ("MRS"). MRS is a corporation organized under the laws of the State of Nevada, USA. MRS has a branch in Singapore located at 438B Alexandra Road, #04-09/12, Block B, Alexandra Technopark, Singapore, 119968. The laws of Washington govern this contract. Any dispute arising out of or related to this contract will be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the Singapore International Arbitration Center (SIAC). These rules are incorporated by reference into this clause. The tribunal will consist of one arbitrator appointed by the Chairman of SIAC. The language of arbitration will be English. The decision of the arbitrator will be final, binding, and incontestable. The decision may be used as a basis for judgment in any country or region.

If you live in **China**, you are contracting with Microsoft Corp., One Microsoft Way, Redmond, WA 98052, USA. Washington State law governs this contract, regardless of conflict of laws principles. The jurisdiction of the state or federal courts in King County, Washington, USA, is nonexclusive.

If you live in **Japan**, you are contracting with Microsoft Japan Co., Ltd (MSKK), Shinagawa Grand Central Tower, 2-16-3 Konan Minato-ku, Tokyo 108-0075. The laws of Japan govern this contract and any matters arising out of or relating to it. You and we irrevocably agree to the exclusive original jurisdiction and venue of the Tokyo District Court for all disputes arising out of or relating to this contract.

If you live in **Korea**, you are contracting with Microsoft Korea, Inc., 6th Floor, POSCO Center, 892 Daechi-Dong, Kangnam-Gu, Seoul, 135-777, Korea. The laws of the Republic of Korea govern this contract. You and we irrevocably agree to exclusive original jurisdiction and venue of the Seoul District Court for all disputes arising out of or relating to this contract.

If you live in **Taiwan**, you are contracting with Microsoft Taiwan Corp., 8F, No 7 Sungren Road, Shinyi Chiu, Taipei, Taiwan 110. The laws of Taiwan govern this contract. You and we irrevocably designate the Taipei District Court as the court of first instance having jurisdiction over any disputes arising out of or in connection with this contract.

20. Support

We do not offer customer support for the Service unless provided otherwise in this contract or the materials we publish in connection with a particular component of the Service. For more information on customer support, please go to <http://www.xbox.com/support>.

21. Xbox LIVE and Games for Windows LIVE

The following additional terms apply to Xbox LIVE and Games for Windows Live:

21.1. Additional Privacy Terms for Xbox LIVE and Games for Windows LIVE. We require certain permissions in order for you to evaluate and enable the features and functions of the Xbox LIVE/Games for Windows Live Service. These features and functions include leaderboards, live-hosted gameplay, achievements, tournaments, and gamer profile sharing. If you evaluate or enable these features and functions you grant Microsoft and its affiliates, resellers, distributors, service providers, partners, and/or suppliers (each, a "Microsoft party") the following permissions. Microsoft parties may use, track, store, copy, distribute, broadcast, transmit, publicly display and perform, and reproduce: (i) your game scores; (ii) your game play sessions; (iii) your presence on the Xbox LIVE/Games for Windows Live Service; (iv) the time that you spend on or within particular portions of the Xbox LIVE/Games for Windows Live Service; (v) portions of the Xbox LIVE/Games for Windows Live Service that are displayed on your monitor or screen and the duration of that display; (vi) rankings, statistics, gamer profiles, avatars, and content that you may submit; and (vii) other usage information. These permissions apply with or without attribution to you, your gamertag or avatar. We may use these permissions without notice or compensation to you of any kind. To avoid any confusion, we have the right to make information pertaining to your use of, and gameplay on, Xbox LIVE available through Games for Windows Live, and vice versa.

You should not expect any level of privacy concerning your use of the live communication features (for example, voice chat, video and communications in live-hosted gameplay sessions) offered through the Xbox LIVE/Games for Windows Live Service. We may monitor these communications to the extent permitted by law. However, we cannot monitor the entire Service and make no attempt to do so. You understand that others can record and use these communications. Communications in live-hosted gameplay sessions may also be broadcast to others. Some games may use game managers and hosts. Game managers and hosts are not authorized Microsoft spokespersons. Their views do not necessarily reflect those of Microsoft.

When you use Voice Search, all voice commands are sent to Microsoft and stored to provide the Voice Search Service and improve Microsoft products. If you use Voice Search, you consent to Microsoft recording and collecting your voice input to provide the Voice Search Service and improve Microsoft products. We will treat any voice input according to the Microsoft Online Privacy Statement (<http://go.microsoft.com/fwlink/?LinkId=81184>).

22. Zune

The following additional terms apply to Zune:

22.1 Zune Pass Subscription. You can choose to sign up for a Zune Pass subscription if available in your Territory. The Zune Pass allows you to stream or download as many songs as you want from the Zune Service on a subscription basis for a flat monthly fee. If you do not pay your subscription fee or your Zune Pass subscription terminates for any other reason, you will no longer have access to any content you downloaded under your Zune Pass subscription.

22.2 Non-commercial use. Music and video content may only be used for personal, non-commercial use and may not be used as a musical "ringer" or ringtone for a mobile phone without the prior written consent of the copyright owner.

22.3 Content Usage Rules for Music and Music Video. All music and music video content you purchase, rent or acquire on a subscription basis from the Zune Service in your Territory is subject to this contract and any other applicable terms and conditions. These include: (i) limitations imposed by copyright owners; (ii) use of digital rights management (DRM) technology; and (iii) the usage rules, located at <http://www.xbox.com/usagerules>.

22.4. Storage. Any burning or exporting capabilities (if applicable) are solely an accommodation to you. They do not constitute a grant or waiver (or other limitation or implication) of any rights of the copyright owners of any audio or video content, sound recording, underlying musical composition or artwork embodied in any purchased content.

22.5. Video Content (Film or Television). We may offer video content in your Territory ("Video Content") for download, streaming or both, on: (i) a limited time-based video-on-demand basis ("VOD Content"); or (ii) a retained license basis ("Retained Rights Content"). You may only stream Video Content to the extent this feature is authorized under the Service. Resolution of Video Content purchased in high definition may vary depending on the content you chose, the device or hardware that you use, and the bandwidth of your Internet connection.

22.5.1. VOD Content. Notwithstanding anything to the contrary in this contract, we grant you a personal, non-exclusive, non-transferable, limited right and license to view and privately display the VOD Content in your Territory for personal, non-commercial purposes only via an Authorized Device. This limited right and license is subject to the terms of this contract and the usage rules, located at <http://www.xbox.com/usagerules> and is effective on payment of the required fees.

22.5.2. Retained Rights Content. Notwithstanding anything to the contrary in this contract, we grant you, a personal, non-exclusive, non-transferable, limited right and license to view and privately display any Retained Rights Content you obtain via the Service in your Territory. This limited right and license is: (i) subject to the terms of this contract; (ii) for personal, non-commercial purposes only, for and during your authorized use of the Zune Service; and (iii) effective on payment of the required fees. Once you obtain a license to an item of Retained Rights Content, you may download or stream a copy of it to one or more Authorized Devices, as set forth in the usage rules, located at <http://www.xbox.com/usagerules>.

23. Windows Phone 7.x.

The Service available in your Territory may enable you to browse, search, download and purchase applications for your Windows ® Phone running a version 7.x of the Windows Phone operating system ("Windows Phone Applications").

We will identify the provider of each Windows Phone Application. It may be Microsoft ("Microsoft applications") or a third party ("Third Party applications"). Your use of Windows Phone Applications is governed by the Standard Application License Terms at the end of these Terms of Use. If a Third Party application provides you with separate terms those apply instead.

We are not a party to the license between you and a Third Party application provider. We act as an agent of the application provider in providing the Third Party application to you. We are not responsible for:

- the Third Party application;
- your use of the Third Party application;
- the content of the Third Party application;
- customer support for the Third Party application; or
- any warranties or claims relating to the Third Party application.

23.1 Removing or Disabling Windows Phone Applications. We may disable the Windows Phone applications contained in your service account for any reason. We may also remove any Windows Phone application or disable copies of any Windows Phone application on your Marketplace enabled

device in order to protect the service, application providers, wireless carriers over whose network you access the service or any other affected or potentially affected parties.

23.2. Privacy Policy for Windows Phone Applications. The privacy policies that apply to Third Party applications will be provided to you with such Third Party applications, and Microsoft's Terms of Use and privacy policies will not apply to your use of a Third Party application.

Standard Application License Terms

STANDARD APPLICATION LICENSE TERMS (UPDATED JUNE 2011)

WINDOWS PHONE APPLICATIONS

These license terms are an agreement between Application Provider and you. Please read them. They apply to the software application you download from the Windows Phone Marketplace ("Application"), unless the Application comes with separate terms ("Third Party License"). In that case, the terms of the Third Party License will apply. This agreement also applies to any updates and supplements for the Application, unless other terms accompany those items. If so, those terms apply.

BY DOWNLOADING OR USING THE APPLICATION, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THEM, DO NOT DOWNLOAD OR USE THE APPLICATION.

Except for the foregoing, if the Application enables access to any Internet-based services, your use of those services will be subject to the separately-provided terms of use.

In this agreement "Application Provider" means the entity licensing the Application to you, as identified in the Windows Phone Marketplace. If the Application is provided by Microsoft, then the Application Provider is Microsoft (or based on where you live, one of its affiliates).

If you comply with these license terms, you have the rights below.

INSTALLATION AND USE RIGHTS.

Installation and Use. You may install and use one copy of the Application on up to five (5) mobile devices you personally own or control and which are affiliated with the Windows Live ID associated with your Windows Phone Marketplace account. You may not install or use a copy of the Application on a device you do not own or control.

INTERNET-BASED SERVICES. Application Provider may provide Internet-based services with the Application. In addition to the following, your use of such services is subject to the terms provided to you by the Application Provider and/or your wireless carrier.

Consent for Internet-Based or Wireless Services. The Application may connect to computer systems over an Internet-based wireless network. In some cases, you will not receive a separate notice when they connect. Using the application operates as your consent to the transmission of standard device information (including but not limited to technical information about your device, system and application software, and peripherals) for Internet-based or wireless services.

Misuse of Internet-based Services. You may not use any Internet-based service in any way that could harm it or impair anyone else's use of it or the wireless network. You may not use the service to try to gain unauthorized access to any service, data, account or network by any means.

Scope of License. The Application is licensed, not sold. This agreement only gives you some rights to use the Application. Application Provider reserves all other rights. Unless applicable law gives you more rights despite this limitation, you may use the Application only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the Application that only allow you to use it in certain ways. You may not:

- work around any technical limitations in the Application;
- reverse engineer, decompile or disassemble the Application, except and only to the extent that applicable law expressly permits, despite this limitation;
- make more copies of the Application than specified in this agreement or allowed by applicable law, despite this limitation;

- publish or otherwise make the Application available for others to copy;
- rent, lease or lend the Application; or
- transfer the Application or this agreement to any third party.

Documentation. If documentation is provided with the Application, you may copy and use the documentation for your internal, reference purposes.

Export Restrictions. The Application is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the Application. These laws include restrictions on destinations, end users and end use. For additional information, see www.microsoft.com/exporting.

Support Services. The Application is provided "as is." Contact the Application Provider to determine if any support services are available. Microsoft (unless Microsoft is the Application Provider), your phone manufacturer, and your wireless carrier are not responsible for providing support services for the Application.

Entire Agreement. This agreement, and the terms for supplements and updates are the entire agreement for the Application.

Applicable Law.

United States. If you acquired the Application in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.

Outside the United States. If you acquired the Application in any other country, the laws of that country apply.

Legal Effect. This agreement describes certain legal rights. You may have other rights under the laws of your country. This agreement does not change your rights under the laws of your country if the laws of your country do not permit it to do so.

Disclaimer of Warranty. THE APPLICATION IS LICENSED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING IT. THE APPLICATION PROVIDER, ON BEHALF OF ITSELF, MICROSOFT, WIRELESS CARRIERS OVER WHOSE NETWORK THE APPLICATION IS PROVIDED, AND EACH OF OUR RESPECTIVE AFFILIATES, AND SUPPLIERS ("COVERED PARTIES"), GIVES NO EXPRESS WARRANTIES, GUARANTEES, OR CONDITIONS UNDER OR IN RELATION TO THE APPLICATION. YOU MAY HAVE ADDITIONAL CONSUMER RIGHTS UNDER YOUR LOCAL LAWS WHICH THIS AGREEMENT CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAWS, COVERED PARTIES EXCLUDE ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Limitation on and Exclusion of Remedies and Damages.

TO THE EXTENT NOT PROHIBITED BY LAW, YOU CAN RECOVER FROM THE APPLICATION PROVIDER ONLY DIRECT DAMAGES UP TO THE AMOUNT YOU PAID FOR THE APPLICATION. YOU AGREE NOT TO SEEK TO RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES FROM ANY COVERED PARTIES.

This limitation applies to

- anything related to the Application, services made available through the Application, or content (including code) on third party Internet sites; and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if

- repair, replacement or a refund for the Application does not fully compensate you for any losses; or
- Covered Party knew or should have known about the possibility of the damages.

If you live in Australia, the above *"Disclaimer of Warranty"* and *"Limitation on and Exclusion of Remedies and Damages"* clauses are subject to the consumer guarantee provisions of the Australian Consumer Law.

Our goods (the Application) come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

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